

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL COSME,  Plaintiff,  - against -  CITY OF NEW YORK, et al.  Defendants.	14 Civ. 1653 (JMF)
CARLOS PEREZ,  Plaintiff,  - against –  CITY OF NEW YORK, et al.  Defendants.	14 Civ. 1654 (JMF)
DEVON AYERS,  Plaintiff,  - against -  CITY OF NEW YORK, et al.  Defendants.	14 Civ. 1655 (JMF)

**DECLARATION OF DAVID A. LEBOWITZ**

DAVID A. LEBOWITZ, an attorney duly admitted to practice in the Southern District of New York, declares under penalty of perjury:

1. I am associated with the firm of Emery Celli Brinckerhoff & Abady LLP, attorneys for Plaintiffs Michael Cosme and Carlos Perez.
2. I respectfully submit this declaration in support of the motion of Plaintiffs Michael Cosme, Carlos Perez, and Devon Ayers for partial summary judgment.

3. Attached hereto as Exhibit 1 is a true and correct copy of relevant excerpts from the criminal trial transcript of *People of the State of New York v. Charles McKinnon* (Bronx County Supreme Court, Indictment #1086-95).

4. Attached hereto as Exhibit 2 is a true and correct copy of Defendants' Reply Memorandum of Law in Further Support of their Motion for Summary Judgement, filed in the related action *Vazquez v. City of New York*, No. 10 Civ. 6277 (S.D.N.Y.).

5. Attached hereto as Exhibit 3 is a true and correct copy of the "V.I. Log," a handwritten log used in 1995 to document the intake of work to the NYPD's Audio/Video Unit.

6. Attached hereto as Exhibit 4 is a true and correct copy of the transcript of the July 22, 2015 deposition of Lieutenant Peter Brower, who testified pursuant to Federal Rule of Civil Procedure 30(b)(6) on behalf of the City of New York concerning the NYPD's policies on the purpose and proper use of the V.I. Log and the capacities and processes of the Audio/Video Unit in 1995.

7. Attached hereto as Exhibit 5 is a true and correct copy of Defendants' Objections and Responses to Plaintiffs' Consolidated Set of Requests for Admission, dated July 30, 2015.

8. Attached hereto as Exhibit 6 is a true and correct copy of Defendants' Amended and Superseding Objections and Responses to Plaintiffs' Second Consolidated Set of Interrogatories, dated July 15, 2015.

9. Attached hereto as Exhibit 7 is a true and correct copy of two still shots extracted from a surveillance tape containing footage recorded at Five Penn Plaza in Manhattan

in January 1995. The two still images show Denise Raymond and Kim Alexander exiting the building together at 6:15 p.m. on January 17, 1995.

10. Attached hereto as Exhibit 8 is a true and correct copy of a DD5 report authored by Robert A. Nugent, dated January 19, 1995.

11. Attached hereto as Exhibit 9 is a true and correct copy of Kim B. Alexander's witness statement, dated January 20, 1995.

12. Attached hereto as Exhibit 10 is a true and correct copy of a DD5 report authored by Thomas J. Aiello, dated January 19, 1995.

13. Attached hereto as Exhibit 11 is a true and correct copy of a DD5 report authored by Thomas J. Aiello, dated January 20, 1995.

14. Attached hereto as Exhibit 12 is a true and correct copy of relevant excerpts from the notes Defendant Aiello made during the course of the 1995 investigation into the murder of Denise Raymond.

15. Attached hereto as Exhibit 13 is a true and correct copy of a DD5 report authored by Thomas J. Aiello, dated January 22, 1995.

16. Attached hereto as Exhibit 14 is a true and correct copy of Kim B. Alexander's witness statement, dated January 22, 1995.

17. Attached hereto as Exhibit 15 is a true and correct copy of a DD5 report authored by Thomas J. Aiello, dated January 31, 1995.

18. Attached hereto as Exhibit 16 is a true and correct copy of the full grand jury transcript from *People of the State of New York v. Michael Cosme and Eric Glisson*.

19. Attached hereto as Exhibit 17 is a true and correct copy of the Indictment in *People of the State of New York v. Eric Glisson, Michael Cosme, Cathy Watkins,*

*Carlos Perez, Israel Vasquez, Charles Edward McKinnon and Devon Ayers*, dated March 6, 1995.

20. Attached hereto as Exhibit 18 is a true and correct copy of excerpted pages from the trial transcript of *People of the State of New York v. Michael Cosme, Carlos Perez, Israel Vasquez and Devon Ayers* (Bronx County Supreme Court, Indictment #1086-95).

21. Attached hereto as Exhibit 19 is a true and correct copy of the Affirmation of Julia P. Kuan in Support of Defendant's C.P.L. § 440.10 Motion, filed in *People of the State of New York v. Michael Cosme* (Bronx County Supreme Court, Indictment #1086-95), dated October 19, 2012.

22. Attached hereto as Exhibit 20 is a true and correct copy of the Affirmation of Eliot Kaplan, filed in *People of the State of New York v. Michael Cosme* (Bronx County Supreme Court, Indictment #1086-95), dated October 18, 2012.

23. Attached hereto as Exhibit 21 is a true and correct copy of the Affirmation of Harvey J. Slovis, filed in *People of the State of New York v. Carlos Perez* (Bronx County Supreme Court, Indictment #1086-95), dated October 4, 2012.

24. Attached hereto as Exhibit 22 is a true and correct copy of the transcript of the July 19, 2012 deposition of Thomas Aiello, conducted in the related *Vazquez* action.

25. Attached hereto as Exhibit 23 is a true and correct copy of relevant excerpts from the transcript of the April 30, 2013 deposition of Howard Ripps, conducted in the related *Vazquez* action.

26. Attached hereto as Exhibit 24 is a true and correct copy of the transcript of the May 14, 2015 deposition of Thomas Aiello in these consolidated actions.

27. Attached hereto as Exhibit 25 is a true and correct copy of the transcript of the July 22, 2015 deposition of Lieutenant John Schneider, who testified pursuant to Federal Rule of Civil Procedure 30(b)(6) on behalf of the City of New York concerning the NYPD's policies on investigations and related matters during the period 1994 through 1998.

28. Attached hereto as Exhibit 26 is a true and correct copy of the transcript of the May 12, 2015 deposition of Thomas Aiello in these consolidated actions.

29. Attached hereto as Exhibit 27 is a true and correct copy of Judge William C. Donnino's decision dated April 15, 1998, denying a motion by Devon Ayers, Michael Cosme, Carlos Perez and Israel Vasquez to vacate their convictions after trial.

30. Attached hereto as Exhibit 28 is a true and correct copy of Respondent's Brief on appeal, filed in *People of the State of New York v. Devon Ayers*, dated August 2000.

31. Attached hereto as Exhibit 29 is a true and correct copy of Respondent's Brief on appeal, filed in *People of the State of New York v. Michael Cosme*, dated August 2000.

32. Attached hereto as Exhibit 30 is a true and correct copy of Respondent's Brief on appeal, filed in *People of the State of New York v. Carlos Perez*, dated February 2000.

33. Attached hereto as Exhibit 31 is a true and correct copy of the Declaration of Theodore Johnson, dated February 17, 2016.

34. Attached hereto as Exhibit 32 is a true and correct copy of Maribell Estela's witness statement, dated January 20, 1995.

35. Attached hereto as Exhibit 33 is a true and correct copy of Jacqueline Chambers's witness statement, dated January 20, 1995.

36. Attached hereto as Exhibit 34 is a true and correct copy of the transcript from the Court's December 11, 2012 decision in the related *Vazquez* action, denying in part and granting in part Defendants' motion to dismiss.

37. Attached hereto collectively as Exhibit 35 are true and correct copies of three photographs of the VHS tape admitted into evidence as Defendant's Exhibit R-1 at the criminal trial of Charles McKinnon. The tape contains surveillance footage recorded at Five Penn Plaza in Manhattan in January 1995.

38. Attached hereto as Exhibit 36 is a true and correct copy of the January 1995 surveillance footage from 5 Penn Plaza that is contained on the VHS tape admitted into evidence as Defendant's Exhibit R-1 at the criminal trial of Charles McKinnon. Exhibit 36 shows, at full speed, the full surveillance video that was produced to Plaintiff's counsel in this action.

39. Because the full speed video is difficult to view, Plaintiffs have also included Exhibit 37, which is a slowed-down version of the relevant footage shot between 5:33 p.m. and 6:36 p.m. on January 17, 1995, the night Denise Raymond was murdered. Kim Alexander and Denise Raymond can be seen exiting the building at 6:15 p.m. They are accompanied by a white male, not a black male as Ms. Alexander testified.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 25, 2016  
New York, New York

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DAVID A. LEBOWITZ